



**MALAYSIAN BIOTECHNOLOGY CORPORATION SDN BHD**  
(Company No. 691431-D)

# **GUIDELINES ON INCENTIVES ACCORDED TO THE BIONEXUS STATUS COMPANIES**

**29 SEPTEMBER 2009**

*This guidance document was approved for release by the Ministry of Finance on 29 September 2009. Whilst every effort has been taken to ensure its accuracy and completeness, inaccuracies may exist due to several reasons including changes in circumstances and/or amendments brought about due to a change in the policy (s) or prevailing rules or regulations.*

*BiotechCorp welcomes feedback and comments on this document. Feedback and comments can be sent to [info@biotechcorp.com.my](mailto:info@biotechcorp.com.my) and by stating clearly in the subject line the document title and document Reference No.*

## **GUIDELINES ON INCENTIVES ACCORDED TO THE BIONEXUS STATUS COMPANIES**

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1. The National Biotechnology Policy (NBP) was launched in 2005 to provide comprehensive framework for the sustainable development of the biotechnology in Malaysia. Biotechnology is one of the drivers of the next wave of knowledge-based industries that will contribute to growth and wealth creation, new investment and employment opportunities as well as deliver social and environmental benefits.
2. Based on the experiences of more developed countries, the promotion of scientific research and science based industry in the initial stages requires considerable Government support. In view of this, the Government has made concerted effort to ensure that the initiatives and incentives are in line with other leading countries.
3. As encapsulated in the NBP, Malaysian Biotechnology Corporation Sdn Bhd (BiotechCorp) was established on 13 May 2005 as a dedicated and professional implementation agency to oversee the development of Malaysia's biotechnology industry, under the purview of Ministry of Science, Technology and Innovation (MOSTI). BiotechCorp will focus on attracting investment, sourcing partnership opportunities as well as supporting local biotechnology entrepreneurs in setting up their business.
4. The brand "BioNexus" will be promoted to market Malaysia's biotechnology initiative to investor and potential partners. BioNexus leverage in the strengths of existing institution along with parallel development in industries. To strengthen the brand, an attractive package of incentives is offered to domestic and foreign BioNexus status companies.
5. Following the above announcement, the incentives below were introduced:

### Income Tax (Exemption) (No.17) Order 2007

This incentive provides an exemption for a BioNexus status company from payment of income tax for:-

A new business - 10 consecutive years of assessment in respect of the statutory income commencing from the first year of assessment in which a company derived the statutory income from the new business.

or

An expansion project - 5 consecutive years of assessment in respect of the statutory income from its existing approved business and expansion project commencing from the first year of assessment in which the company derived statutory income from the existing approved business and expansion project and

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the first year of assessment shall not be earlier than the year of assessment in the basis period in which the date of approval from the Minister of Finance falls.

### Income Tax (Exemption) (No.18) Order 2007

This incentive provides an exemption for a BioNexus status company from payment of income tax in respect of 100% statutory income derived from a new business or an expansion project equivalent to an allowance of 100% of the qualifying capital expenditure incurred in the basis period for a year of assessment within a period of 5 years.

### Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007

These Rules provide a 100% deduction for an amount equivalent to the value of investment made by a qualifying person in a company which has been approved by the Minister as a BioNexus status company.

### Income Tax (Industrial Building Allowance) (BioNexus Status Company) Rules 2007

These Rules provide for an allowance equal to one tenth (10%) of qualifying building expenditure incurred by a BioNexus status company for a year of assessment and for each of the following nine years of assessment.

6. “Malaysian Biotechnology Corporation Sdn. Bhd.” means a company incorporated under the Companies Act 1965 whose function is for the purpose of developing the biotechnology industry in Malaysia.
7. “BioNexus status company” means a company incorporated under the Companies Act, 1965 which is engaged in a business of life sciences and has obtained approval of the status by BiotechCorp.
8. These guidelines are to be read together with the relevant Orders / Rules as attached in Appendices I to IV.

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### **A. Guidelines on Income Tax (Exemption) (No. 17) Order 2007**

1. This order is effective for applications submitted to BiotechCorp on or after 1 May 2005.
2. These guidelines are to be read together with the Income Tax (Exemption) (No. 17) Order 2007 as attached in Appendix I.
3. This Order provides an exemption from tax on 100% statutory income of new business or expansion project :
  - For a period of 10 consecutive years of assessment commencing from the first year of assessment in which the BioNexus status company derived the statutory income from the new business; or
  - For a period of 5 consecutive years of assessment in respect of the statutory income from its existing approved business and expansion project with the first year of assessment not being earlier than the year of assessment in the basis period in which the date of approval from the Minister of Finance falls.
4. “incurred” has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 of the Income Tax Act, 1967.

Paragraph 46 : Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, the aggregate of those payments) made by him under that agreement in that period.

Paragraph 55: For the purpose of this Schedule [Schedule 3] –

- (a) in the case of any expenditure incurred on the construction of building, the day on which that expenditure is incurred is the day on which the construction of the building is completed and in the case of expenditure incurred on the provision of machinery or plant for the purposes of a business the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the business; and

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- (b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount is of expenditure is incurred :

Provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, that expenditure shall be deemed to be incurred when he commences to carry on the business.

5. “new business” means new biotechnology activities undertaken by a BioNexus status company and the activities are approved by BiotechCorp.

All first approved business by BiotechCorp would qualify as “new business”. Situations where a new business arises include:

- An existing company which has been granted approval for tax incentives under the Promotion of Investments Act, 1986 or Income Tax Act, 1967 [referred to in Paragraph 11(b) of the Income Tax (Exemption) (No. 17) Order 2007 and tax exemption under Subsection 127(3A) or Paragraph 127(3)(b) of the Income Tax Act, 1967] and/or non tax incentives in respect of its new business can be considered for BioNexus status and the tax incentives under the Income Tax (Exemption) (No. 17) Order 2007 provided that the company has not incurred capital expenditure on the project. The company is required to surrender the tax incentives and/or non tax incentives upon approval of BioNexus status and tax incentives. This condition is effective from 13 November 2008.
- A dormant company obtains BioNexus status for carrying out approved biotechnology activities. The approved biotechnology activities would qualify as new business.
- An existing company which was not carrying on biotechnology activity prior to the granting of BioNexus status carries on approved biotechnology activities after the granting of the status. The approved biotechnology activities would qualify as new business.
- An existing company that was carrying on biotechnology activities prior to the granting of BioNexus status carries on new additional biotechnology activities after the grant of BioNexus status. These new additional biotechnology activities (not related to the existing

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biotechnology activities) constitute the first approved business by BiotechCorp and would qualify as new business.

6. “expansion project” means a project undertaken by a BioNexus status company in expanding its existing business (biotechnology activities) and that business—
- (a) has not been granted exemption under this Order and the Income Tax (Exemption) (No. 18) Order 2007 [P.U. (A) 372/2007]; and
  - (b) involves new investment.

“New investment” means additional capital investment for the existing biotechnology activities which should result in increasing the existing production capacity or producing related products within the same industry.

An expansion project arises when an existing company expands its existing biotechnology activities as approved by BiotechCorp as qualifying biotechnology activities.

An application for certification of an increase of existing biotechnology activities should be made to BiotechCorp. Once the applicant has obtained that certification from BiotechCorp, the applicant must retain the letter of certification for review by the Inland Revenue Board in the event of a tax audit. The application is to be made to BiotechCorp by completing the form entitled “Application Form for Certification of Tax Incentive for Expansion Project in BioNexus Status Companies”. The application form must be accompanied by the following documents:

- Ownership structure (name of shareholders and percentage of shareholding);
- Organisation chart;
- Copy of Memorandum of Association and Articles of Association;
- Latest audited financial statements (including detailed profit and loss accounts); and
- Any other documents as required by BiotechCorp.

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All application forms and other additional documents as requested in these Guidelines and form are to be submitted to BiotechCorp at the following address:

Malaysian Biotechnology Corporation Sdn Bhd  
Level 23, Menara Naluri  
161 Jalan Ampang  
50450 Kuala Lumpur  
Tel : (603) 2116 5588  
Fax : (603) 2116 5577

7. This Order does not apply on a new business or an expansion project that does not commence within one year from the date of approval of BioNexus status or after such extended period approved by the Minister.

The application to determine the date of commencement is to be submitted to BiotechCorp within a year from the date of approval or after such extended period approved by the Minister in a prescribed form supported by the relevant documents. The date of commencement is determined by BiotechCorp.

An official letter will be issued by BiotechCorp to confirm the date of commencement and this letter would serve as documentary evidence for substantiating that the business or project commenced within one year from the date of approval (or approved extended date).

8. Statutory income is arrived at in the following manner:-

	<u>Amount</u> RM	<u>Amount</u> RM
Net profit before tax		Xx
Add / (Less) : Tax adjustments		(xx)
Adjusted income		Xxx
Add / (Less) : Schedule 3 allowances		
- Balancing charge	X	
- Balancing allowance	(x)	
- Capital allowance / industrial building allowance	(x)	(xx)
Statutory income		Xxx

The allowances under Schedule 3 of the Income Tax Act, 1967 are to be deducted notwithstanding that no claim has been made.

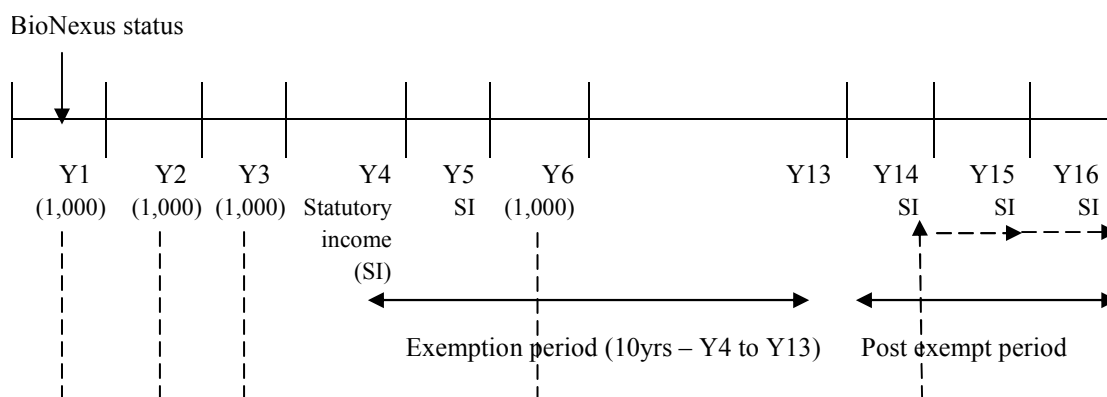
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9. Utilisation of unabsorbed losses brought forward and current year losses
- The 10 years of assessment period of tax exemption for a BioNexus status company in relation to a new business commences from the first year of assessment in which it derived statutory income from its new business.
  - The 5 years of assessment period of tax exemption for a BioNexus status company in relation to an expansion project commences from the first year of assessment in which the company derived statutory income from the existing approved business and expansion project.
  - Any losses incurred prior to (i.e. after the commencement of new business or expansion project but before the start of the exempt period) or during the exempt period pertaining to new business or expansion project can be carried forward to the post-exempt period for set off against the statutory income of the business or project of the company until they are wholly utilised.
  - During the exempt period, the provisions of Section 43(2) on utilisation of brought forward losses and Section 44(2) on the utilisation of current year losses under the Income Tax Act, 1967 would not apply to a BioNexus status company.

This is illustrated as follows:

### Example 1



Company X was granted BioNexus status in Y1. It commenced its qualifying and approved biotechnology activities in Y1. Its tax exempt



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period starts in Y4 i.e. in the year it first derives statutory income and ends in Y13.

The losses incurred by the company are as follows:-

Y1 -	RM1,000
Y2 -	RM1,000
Y3 -	RM1,000
Y6 -	RM1,000
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Accumulated losses	RM4,000
	=====

The accumulated losses of RM4,000 can be utilised in the YA2014, i.e. the first year of assessment (“YA”) after the exempt period and subsequent YAs.

### 10. Application of deduction for promotion of exports under the Promotion of Investments Act, 1986

A deduction of expenses for promotion of exports under Section 33(1) of the Income Tax Act, 1967 is to be claimed during the exempt period.

Any qualifying expenses incurred on promotion of exports during the exempt period are allowed a further deduction under Section 41 of the Promotion of Investments Act, 1986. These expenses are to be accumulated and allowed as a deduction in the first year of assessment after the exempt period.

Example 2:

Company A was granted BioNexus status for new business on 1 January 2008. Tax exemption period of 10 years starts in the YA2008 and will end in YA2017. The company is eligible for a deduction of expenses for promotion of exports under Section 41 as follows:-

YA2009 –	RM25,000
YA2011 –	RM50,000
YA2015 –	RM15,000
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Total	RM90,000
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The accumulated amount of RM90,000 can be utilised in the YA2018, i.e. the first YA after the exempt period.

The original relevant forms for the claim under Section 41 of the Promotion of Investments Act, 1986 are to be completed in two copies. A copy of the original form and original supporting document should be kept by the claimant company for tax audit purposes. The second original copy is to be submitted to the Technical Division of the Inland Revenue Board, Level 12, Block 9, Government Building Complex, Jalan Duta, 50600 Kuala Lumpur within 7 months from the financial year-end.

The form is to be submitted for the relevant year of assessment but a claim for the further deduction is to be made in the future i.e. in the first year of assessment after the exempt period.

11. Application of deduction for research under Section 34A of the Income Tax Act, 1967

A deduction of expenses for research under Section 34A during the exempt period is to be accumulated and allowed as a deduction in the first year of assessment after the exempt period.

Example 3:

Company B was granted BioNexus status on 1 January 2007. Tax exemption period starts in the year of assessment (“YA”) 2007 and will end in YA2016. The company is eligible for a deduction for research as follows:-

YA2009 –	RM35,000
YA2011 –	RM10,000
YA2015 –	RM15,000
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Total	<u>RM60,000</u>

The accumulated amount of RM60,000 can be utilised in the YA2017, i.e. the first YA after the exempt period.

The original relevant forms for the claim under Section 34A are to be completed in two copies. A copy of the original form and original supporting document should be kept by the claimant company for tax audit purposes. The second original copy is to be submitted to the Technical

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Division of the Inland Revenue Board, Level 12, Block 9, Government Building Complex, Jalan Duta, 50600 Kuala Lumpur within 7 months from the financial year-end.

The form is to be submitted for the relevant year of assessment but a claim for these expenses are to be made in the future i.e. in the first year of assessment after the exempt period.

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### **B. Guidelines on Income Tax (Exemption) (No. 18) Order 2007**

1. This order is effective for applications submitted to BiotechCorp on or after 1 May 2005.
2. These guidelines are to be read together with the Income Tax (Exemption) (No. 18) Order 2007 as attached in Appendix II.
3. This Order provides an exemption of 100% statutory income derived from a new business or an expansion project equivalent to an allowance of 100% of qualifying capital expenditure incurred in the basis period for a year of assessment.

The qualifying capital expenditure is to be incurred for a period of 5 years commencing from the date the first qualifying capital expenditure was incurred. In relation to a new business, the date of the first qualifying capital expenditure incurred:-

- must not be earlier than 1 May 2005; or
- within 3 years from the date of approval as a BioNexus status company, whichever is later.

For an expansion project, the date of first qualifying expenditure shall not be earlier than the date of application received by BiotechCorp.

The date when the first qualifying capital expenditure is incurred will be determined by BiotechCorp.

In the absence or insufficiency of statutory income for a year of assessment, the amount of unutilised allowance can be carried forward and set off against –

- the first subsequent year of assessment the company has statutory income from that business or project; and
- subsequent years of assessment until the whole amount is fully utilised.

Where qualifying capital expenditure is incurred by a BioNexus status company on an asset used for the purpose of the new business and / or the expansion project and such asset is disposed of at any time within two years from the date of acquisition of the asset, the amount of income

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exempted in respect of the allowance of such asset is deemed to have not been exempted to the company. The clawback would be made in the year of disposal.

4. “incurred” has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 of the Income Tax Act, 1967.

Paragraph 46 : Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, the aggregate of those payments) made by him under that agreement in that period.

Paragraph 55: For the purpose of this Schedule [Schedule 3] –

- (a) in the case of any expenditure incurred on the construction of building, the day on which that expenditure is incurred is the day on which the construction of the building is completed and in the case of expenditure incurred on the provision of machinery or plant for the purposes of a business the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the business; and
- (b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount is of expenditure is incurred :

Provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, that expenditure shall be deemed to be incurred when he commences to carry on the business.

5. “qualifying capital expenditure” means capital expenditure incurred on an asset used in Malaysia for the purpose of a new business or an expansion project, as the case may be—
- (a) in relation to manufacturing or manufacturing based research, a factory, a building used for activity of research and development, plant and machinery; or

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- (b) in relation to agriculture or agriculture based research, the clearing and preparation of land, the planting of crops (first planting or planting of trial crops), the provision of irrigation or drainage system, the provision of plant and machinery, the purchase or construction of a building used for the activity of research and development, or the activity of agriculture (including those provided for the welfare or living accommodation of persons who are working in the farm), construction of access roads, bridge and any permanent structure improvement on land which formed as part of the land used for the business.

Qualifying capital expenditure excludes capital expenditure incurred on buildings used as living accommodation, plant and machinery which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff

6. “new business” means new biotechnology activities undertaken by a BioNexus status company and the activities are approved by BiotechCorp.

All first approved business by BiotechCorp would qualify as “new business”. Situations where a new business arises include:

- An existing company which has been granted approval for tax incentives under the Promotion of Investments Act, 1986 or Income Tax Act, 1967 [referred to in Paragraph 10(b) of the Income Tax (Exemption) (No. 18) Order 2007 and tax exemption under Subsection 127(3A) or Paragraph 127(3)(b) of the Income Tax Act, 1967] and/or non tax incentives in respect of its new business can be considered for BioNexus status and the tax incentives under the Income Tax (Exemption) (No. 18) Order 2007 provided that the company has not incurred capital expenditure on the project. The company is required to surrender the tax incentives and/or non tax incentives upon approval of BioNexus status and tax incentives. This condition is effective from 13 November 2008.
- A dormant company obtains BioNexus status for carrying out approved biotechnology activities. The approved biotechnology activities would qualify as new business.

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- An existing company which was not carrying on biotechnology activity prior to the granting of BioNexus status carries on approved biotechnology activities after the granting of the status. The approved biotechnology activities would qualify as new business.
- An existing company that was carrying on biotechnology activities prior to the granting of BioNexus status carries on new additional biotechnology activities after the grant of BioNexus status. These new additional biotechnology activities (not related to the existing biotechnology activities) constitute the first approved business by BiotechCorp and would qualify as new business.

7. “expansion project” means a project undertaken by a BioNexus status company in expanding its existing business (biotechnology activities) and that business—

- (a) has not been granted exemption under this Order and the Income Tax (Exemption) (No. 17) Order 2007 [P.U. (A) 371/2007]; and
- (b) involves new investment.

“New investment” means additional capital investment for the existing biotechnology activities which should result in increasing the existing production capacity or producing related products within the same industry.

An expansion project arises when an existing company expands its existing biotechnology activities as approved by BiotechCorp as qualifying biotechnology activities.

An application for certification of an increase of existing biotechnology activities should be made to BiotechCorp. Once the applicant has obtained that certification from BiotechCorp, the applicant must retain the letter of certification for review by the Inland Revenue Board in the event of a tax audit. The application is to be made to BiotechCorp by completing the form entitled “Application Form for Certification of Tax Incentive for Expansion Project in BioNexus Status Companies”. The application form must be accompanied by the following documents:

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- Ownership structure (name of shareholders and percentage of shareholding);
- Organisation chart;
- Copy of Memorandum of Association and Articles of Association;
- Latest audited financial statements (including detailed profit and loss accounts); and
- Any other documents as required by BiotechCorp.

All application forms and other additional documents as requested in these Guidelines and form are to be submitted to BiotechCorp at the following address:

Malaysian Biotechnology Corporation Sdn Bhd  
Level 23, Menara Naluri  
161 Jalan Ampang  
50450 Kuala Lumpur  
Tel : (603) 2116 5588  
Fax : (603) 2116 5577

8. This Order does not apply on a new business or an expansion project that does not commence within one year from the date of approval of BioNexus status or after such extended period approved by the Minister.

The application to determine the date of commencement is to be submitted to BiotechCorp within a year from the date of approval or after such extended period approved by the Minister in a prescribed form supported by the relevant documents. The date of commencement is determined by BiotechCorp.

An official letter will be issued by BiotechCorp to confirm the date of commencement and this letter would serve as documentary evidence for substantiating that the business or project commenced within one year from the date of approval (or approved extended date).



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9. Statutory income is arrived at in the following manner:-

	<u>Amount</u> RM	<u>Amount</u> RM
Net profit before tax		xx
<u>Add / (Less) : Tax adjustments</u>		(xx)
Adjusted income		xxx
<u>Add / (Less) : Schedule 3 allowances</u>		
- Balancing charge	X	
- Balancing allowance	(x)	
- Capital allowance / industrial building allowance	(x)	(xx)
Statutory income		xxx

The allowances under Schedule 3 of the Income Tax Act, 1967 are to be deducted notwithstanding that no claim has been made.

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### **C. Guidelines on Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007**

1. These Rules are effective for applications submitted to BiotechCorp on or after 1 May 2005.
2. These guidelines are to be read together with the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 as attached in Appendix III.
3. “investment” means an investment in the form of cash or holding of issued shares capital in a BioNexus status company. “Shares” mean ordinary shares. The ordinary shares must be subscribed via cash.
4. “early stage” means the stage of initiating commercialization of a technology or product, increasing product capacity, product development and marketing.

Initialising commercialization includes (but not limited to) the following activities:

- Market study
  - Certification and validation
  - Prototyping
  - Pilot plant
5. “seed capital stage” means the stage of research, assessment and development of an initial concept or prototype. Research excludes basic research.
  6. These Rules provide for a 100% deduction equivalent to the value of investment made in a BioNexus status company for the sole purpose of financing activities or seed capital or early stage of a new business in arriving at adjusted income of qualifying person.

Investment made by the qualifying person prior to the commencement of a new business is deemed to be incurred on the date the new business commences and the date shall be determined by BiotechCorp. The investment is for the sole purpose of financing activities at seed capital or early stage of a new business.

In the context of a BioNexus status company, seed capital or early stage for a new business may comprise several phases such that the investments are made at various phases within the seed capital or early stage. The

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deduction on the investment would be applicable at all phases within the seed capital or early stage.

The amount of investment made for each phase has to be approved by the Minister of Finance before a deduction can be claimed.

The investment in the form of holding of issued share capital must not be disposed of within 5 years from the date of last investment. Any proceeds on disposal within 5 years will be added in ascertaining the adjusted income of the qualifying person for the year of assessment in the basis period in which proceeds are received, provided that the amount added back must not exceed the total deductions allowed for the investment.

The deduction will cease to apply to the qualifying person in the basis period for a year of assessment when a BioNexus status company derived its first statutory income from its approved business activity.

7. Adjusted income is arrived at in the following manner:-

	<u>Amount</u> RM
Net profit before tax	xx
<u>Add / (Less) :</u>	
Tax adjustments	(xx)
Deduction pursuant to Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007	(xx)
Adjusted income	xxx

8. The investor should request from the investee company (BioNexus Status company) the official letter issued by BiotechCorp confirming the date of commencement of new business. This letter would serve as documentary evidence for substantiating the deduction made by the qualifying person under these Rules.

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### **D. Guidelines for Income Tax (Industrial Building Allowance) (BioNexus Status Company) Rules 2007**

1. These Rules are effective for applications submitted to BiotechCorp on or after 2 September 2006.
2. These guidelines are to be read together with the Income Tax (Industrial Building Allowance) (BioNexus Status Company) Rules 2007 as attached in Appendix IV.
3. These rules provide for a claim to be made by a BioNexus status company for industrial building allowance equivalent to one tenth of qualifying building expenditure incurred in the basis period for a year of assessment and for each of the following 9 years of assessment.

If the qualifying building expenditure is incurred prior to the commencement of new business or expansion project, it is deemed to be incurred on the date the business or project commences.

The first qualifying building expenditure incurred will be on a date determined by BiotechCorp and the date will not be earlier than 2 September 2006.

Where a building which qualifies for industrial building allowance is disposed of within 2 years from the date of completion or acquisition of the building, the allowance which have been made by the company will be withdrawn in the basis period in the year of assessment the building is disposed of.

4. “qualifying capital expenditure” means capital expenditure incurred on the construction or purchase of a building under Paragraph 3 of Schedule 3 of the Income Tax Act, 1967 but excludes capital expenditure incurred on buildings used for storage or as living accommodation which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff.

Paragraph 3:

- (1) Subject to Paragraph 6, qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be as an industrial building.

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- (2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the amount of the purchase price of that building.

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### **Errata**

Please note the following corrections:

#### **Page 1, item 1**

1. The National Biotechnology Policy (NBP) was launched in 2005 to provide comprehensive framework for the sustainable development of the biotechnology industry in Malaysia. Biotechnology is one of the drivers of the next wave of knowledge-based industries that will contribute to growth and wealth creation, new investment and employment opportunities as well as deliver social and environmental benefits.

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All application forms and other additional documents as requested in these Guidelines and form are to be submitted to BiotechCorp at the following address:

Vice President  
Advisory & Processing  
Client Support Services Division  
Malaysian Biotechnology Corporation Sdn Bhd  
Level 23, Menara Atlan  
161B, Jalan Ampang  
50450 Kuala Lumpur  
Tel : (603) 2116 5588  
Fax : (603) 2116 5528

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All application forms and other additional documents as requested in these Guidelines and form are to be submitted to BiotechCorp at the following address:

Vice President  
Advisory & Processing  
Client Support Services Division  
Malaysian Biotechnology Corporation Sdn Bhd  
Level 23, Menara Atlan  
161B, Jalan Ampang  
50450 Kuala Lumpur  
Tel : (603) 2116 5588  
Fax : (603) 2116 5528

**P.U. (A) 371.**

**INCOME TAX ACT 1967**

**INCOME TAX (EXEMPTION) (No.17) ORDER 2007**

IN exercise of the powers conferred by paragraph 127(3)(b) of the Income Tax Act 1967 [Act 53], the Minister makes the following order:

**Citation and commencement**

1. (1) This order may be cited as the **Income Tax (Exemption) (No.17) Order 2007**.
- (2) This Order is deemed to have come into operation on 1 May 2005.

**Interpretation**

2. In this Order, unless the context otherwise requires –

“incurred” has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 of the Act;

“Malaysian Biotechnology Corporation Sdn. Bhd.” means a company incorporated under the Companies Act 1965 [Act 125] whose function is for the purpose of developing the biotechnology industry in Malaysia;

“new business” means the first approved business undertaken by a BioNexus status company;

“expansion project” means a project undertaken by a BioNexus status company in expanding its existing approved business and that business –

- (a) has not been granted exemption under this Order and the Income Tax (Exemption) (No. 18) Order 2007 [P.U. (A) 372/2007]; and
- (b) involves new investment;

“life sciences” means any of several branches of science, such as biology, medicine, anthropology or ecology, that deal with living organisms and their organization, life processes, and relationships to each other and their environment;

“BioNexus status company” means a company incorporated under the Companies Act 1965 which is engaged in a business of life sciences.

**Exemption**

3. (1) Subject to subparagraph (2), the Minister exempts a company resident in Malaysia which has been approved by the Minister as a BioNexus status company from the payment of income tax in relation to –

- (a) a new business, for a period of ten consecutive years of assessment, in respect of the statutory income commencing from the first year of assessment in which the company derived the statutory income from the new business; or
- (b) an expansion project, for a period of five consecutive years of assessment, in respect of the statutory income from its existing approved business and expansion project, commencing from the first year of assessment in which the company derived the statutory income from the existing approved business and expansion project, and that first year of assessment shall not be earlier than the year of assessment in the basis period in which the date of approval from the Minister falls;

(the ten consecutive years of assessment or five consecutive years of assessment, as the case may be, hereinafter referred to as “the exempt years of assessment”).

(2) The statutory income of the business or project referred to in subparagraph (1)(a) or (b), as the case may be, in the basis period for each of the exempt years of assessment shall be determined after deducting allowances which fall to be made under Schedule 3 to the Act notwithstanding that no claim for such allowances has been made:

Provided that where an asset used for the purpose of the business or project referred to in subparagraph (1)(a) or (b), as the case may be, is also used for the purpose of a business or project other than that business or project, then the allowances which fall to be made under Schedule 3 to the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purpose of the first-mentioned business or project.

(3) Nothing in subparagraph (1) shall absolve or is deemed to have absolved the company from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provision of the Act.

**Losses**

4. (1) Any amount of adjusted loss incurred –

- (a) from the year of assessment in the basis period in which the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be,



has commenced until the year of assessment immediately prior to the exempt years of assessment; and

(b) during the exempt years of assessment,

shall be carried forward and deducted against the statutory income of the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be, in its post-exempt year or years of assessment until the business or project, as the case may be, has utilised the whole amount of the adjusted loss to which it is so entitled.

(2) So much of the adjusted loss that was utilised to reduce the statutory income of the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be, in its post-exempt year or years of assessment shall be disregarded for the purpose of subsections 43(2) and 44(2) of the Act.

### **Application of deductions for promotion of exports under the Promotion of Investment Act 1986**

5. For the purpose of computing the adjusted income from the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be, an expenditure which would be allowed as a deduction during exempt period under section 41 of the Promotion of Investment Act 1986 [*Act 327*] shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt period.

### **Application of deduction for research under section 34A of the Act**

6. (1) For the purpose of computing the adjusted income from the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be, an expenditure which would be allowed as a deduction during exempt period for research under section 34A of the Act shall be accumulated and the aggregate amount of the expenditure shall be allowed as a deduction in the first basis period for a year of assessment after the exempt period.

(2) The amount of deduction to be made under subparagraph (1) shall be equal to the amount of expenditure incurred.

(3) Where a deduction has been made under this Order in respect of an expenditure referred to in subparagraph (1), such expenditure shall not be eligible for any deduction under the Act.

**Capital allowance**

7. For the purpose of this Order, Schedule 3 of the Act shall apply.

**Withdrawal of tax exemption**

8. The Minister may withdraw the tax exemption on the statutory income of the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be, if a BioNexus status company fails to comply with the conditions as approved by the Minister.

**Separate account**

9. A BioNexus status company which is exempted under subparagraph 3(1)(a) or (b), as the case may be, shall maintain separate account for the income derived from the business or project referred to in that subparagraph.

**Application of paragraphs 5 and 6 of Schedule 7A**

10. Paragraphs 5 and 6 of Schedule 7A of the Act shall apply, *mutatis mutandis*, to the amount of statutory income exempted from the business or project referred to in subparagraph 3(1)(a) or (b), as the case may be.

**Non-application**

11. This Order shall not apply to –

- (a) a new business or an expansion project, as the case may be, that commences after one year from the date of approval or after such extended period approved by the Minister;
- (b) a company in the basis period for a year of assessment which has been granted –
  - (i) deduction under the Income Tax (Allowance for Increased Exports) Rules 1999 [*P.U. (A) 128/1999*];
  - (ii) deduction under the Income Tax (Deduction for Cost on Acquisition of a Foreign Owned Company) Rules 2003 [*P.U. (A) 310/2003*];
  - (iii) deduction under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [*P.U. (A) 55/2006*];

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- (iv) exemption on the value of increased exports under the Income Tax (Exemption) (No. 17) Order 2005 [*P.U. (A) 158/2005*];
- (v) reinvestment allowance under Schedule 7A of the Act;
- (vi) any incentives (except deductions for promotion of exports) under the Promotion of Investments Act 1986;
- (vii) exemption for an approved food production project under the Income Tax (Exemption) (No. 10) Order 2006 [*P.U. (A) 51/2006*];
- (viii) exemption under the Income Tax (Exemption) (No. 40) Order 2005 [*P.U. (A) 307/2005*];
- (ix) exemption under the Income Tax (Exemption) (No. 41) Order 2005 [*P.U. (A) 308/2005*];
- (x) exemption under the Income Tax (Exemption) (No. 42) Order 2005 [*P.U. (A) 309/2005*];
- (xi) exemption for venture capital company under the Income Tax (Exemption) (No. 11) Order 2005 [*P.U. (A) 75/2005*];
- (xii) deduction under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [*P.U. (A) 76/2005*]; or
- (xiii) deduction under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [*P.U. (A) 373/2007*].

Made 3 July 2007

[Perb. CR(8.09)294/6/4-9(Sj.9) (Sk. 9); LHDN. 01/35/(S)/42/51/82-64; PN(PU<sup>2</sup>)80/LI]

TAN SRI NOR MD BIN YAKCOP  
*Second Minister of Finance*

[*To be laid before the Dewan Rakyat pursuant to subsection 127(4) of the Income Tax Act 1967*]

P.U. (A) 372.

INCOME TAX ACT 1967

INCOME TAX (EXEMPTION) (NO. 18) ORDER 2007

IN exercise of the powers conferred by paragraph 127(3)(b) of the Income Tax Act 1967 [*Act* 53], the Minister makes the following order:

**Citation and commencement**

1. (1) This order may be cited as the **Income Tax (Exemption) (No. 18) Order 2007**.

(2) This Order is deemed to have come into operation on 1 May 2005.

**Interpretation**

2. In this Order, unless the context otherwise requires –

“incurred” has the same meaning assigned thereto in paragraphs 46 and 55 of Schedule 3 to the Act;

“Malaysian Biotechnology Corporation Sdn. Bhd.” means a company incorporated under the Companies Act 1965 [*Act 125*] whose function is for the purpose of developing the biotechnology industry in Malaysia;

“qualifying capital expenditure” means capital expenditure incurred on an asset used in Malaysia for the purpose of a new business or an expansion project, as the case may be –

(a) in relation to manufacturing or manufacturing based research, a factory, a building used for activity of research and development, plant and machinery; or

(b) in relation to agriculture or agriculture based research, the clearing and preparation of land, the planting of crops (first planting or planting of trial crops), the provision of irrigation or drainage system, the provision of plant and machinery, the purchase or construction of a building used for the activity of research and development, or the activity of agriculture (including those provided for the welfare or living accommodation of persons who are working in the farm), construction of access roads, bridge and any permanent structure improvement on land which formed as part of the land used for the business:

Provided that such qualifying capital expenditure shall not include capital expenditure incurred on buildings used as living accommodation, plant and machinery which are provided

wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff;

“new business” means the first approved business undertaken by a BioNexus status company;

“expansion project” means a project undertaken by a BioNexus status company in expanding its existing approved business and that business –

(a) has not been granted exemption under this Order and the Income Tax (Exemption) (No. 17) Order 2007 [*P.U. (A) 371/2007*];

(b) involves new investment;

“life sciences” means any of several branches of science, such as biology, medicine, anthropology or ecology, that deal with living organisms and their organization, life processes and relationships to each other and their environment;

“BioNexus status company” means a company incorporated under the Companies Act 1965 which is engaged in a business of life sciences.

### **Exemption**

3. (1) The Minister exempts a company resident in Malaysia which has been approved by the Minister as a BioNexus status company in the basis period for a year of assessment from the payment of income tax in respect of the statutory income derived from a new business or an expansion project, as the case may be, which is equivalent to the amount of allowance as determined in subparagraph (2).

(2) The amount of allowance referred to in subparagraph (1) shall be one hundred per cent of the qualifying capital expenditure incurred in the basis period for a year of assessment within a period of five years.

(3) The date of commencement of the period referred to in subparagraph (2) shall be determined by the Malaysian Biotechnology Corporation Sdn. Bhd. and in relation to –

(a) a new business, on the date the first qualifying capital expenditure has been incurred and that date shall not be earlier than 1 May 2005 or shall be three years from the date of approval as a BioNexus status company whichever is later; or

(b) an expansion project, on the date the first qualifying capital expenditure has been incurred and that date shall not be earlier than the date of application received by the Malaysian Biotechnology Corporation Sdn. Bhd.

(4) Nothing in subparagraph (1) shall absolve or is deemed to have absolved the company from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of the Act.

### **Statutory income**

4. (1) The statutory income referred to in subparagraph 3(1) shall be determined after deducting allowances which fall to be made under Schedule 3 of the Act notwithstanding that no claim for such allowances has been made:

Provided that where an asset used for the purpose of the new business or the expansion project, as the case may be, is also used for the purpose of a business other than that business or project, then the allowances which fall to be made under Schedule 3 to the Act shall be deducted as is reasonable having regard to the extent to which the asset is used for the purpose of the first-mentioned business or project.

(2) The amount of allowance so exempt referred to in subparagraph 3(1) shall be equal to the amount of the statutory income for each year of assessment.

(3) Where, by reason of the absence or insufficiency of the statutory income, effect cannot be given or cannot be given in full to the amount as determined to which the company is entitled under subparagraph 3(1) for that year of assessment, then so much of that amount which cannot be exempted for that year of assessment shall be exempted for the first subsequent year of assessment for the basis period for which there is statutory income from that business or project, as the case may be, and for subsequent years of assessment until the whole of the amount to which it is so entitled is exempted.

### **Determination of qualifying capital expenditure**

5. Where qualifying capital expenditure is incurred by a BioNexus status company on an asset used for the purpose of the new business or the expansion project and such asset is disposed of at any time within two years from the date of acquisition of the asset, the amount of income exempted in respect of the allowance of such asset is deemed to have not been exempted to the company to which it would otherwise be entitled.

### **Capital allowance**

6. For the purpose of this Order, Schedule 3 of the Act shall apply.

### Withdrawal of tax exemption

7. The Minister may withdraw the tax exemption on the statutory income of the new business or the expansion project referred to in subparagraph 3(1), as the case may be, if a BioNexus status company fails to comply with the conditions as approved by the Minister.

### Separate account

8. A BioNexus status company shall maintain a separate account for the income derived from the new business or the expansion project referred to in subparagraph 3(1), as the case may be, in the basis period for each year of assessment until that business or project, as the case may be, received the whole of allowance or allowances to which it is so entitled.

### Application of paragraphs 5 and 6 of Schedule 7A

9. Paragraphs 5 and 6 of Schedule 7A of the Act shall apply, *mutatis mutandis*, to the amount of statutory income exempted from the new business or the expansion project referred to in subparagraph 3(1), as the case may be.

### Non-application

10. This Order shall not apply to –

- (a) a new business or an expansion project, as the case may be, that commences after one year from the date of approval or after such extended period approved by the Minister;
- (b) a company in the basis period for a year of assessment which has been granted –
  - (i) deduction under the Income Tax (Allowance for Increased Exports) Rules 1999 [*P.U. (A) 128/1999*];
  - (ii) deduction under the Income Tax (Deduction for Cost on Acquisition of a Foreign Owned Company) Rules 2003 [*P.U. (A) 310/2003*];
  - (iii) deduction under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006 [*P.U. (A) 55/2006*];
  - (iv) exemption on the value of increased exports under the Income Tax (Exemption) (No. 17) Order 2005 [*P.U. (A) 158/2005*];
  - (v) reinvestment allowance under Schedule 7A of the Act;
  - (vi) any incentives (except deductions for promotion of exports) under the Promotion of Investments Act 1986 [*Act 327*];

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- (vii) exemption for an approved food production project under the Income Tax (Exemption) (No. 10) Order 2006 [*P.U. (A) 51/2006*];
- (viii) exemption under the Income Tax (Exemption) (No. 40) Order 2005 [*P.U. (A) 307/2005*];
- (ix) exemption under the Income Tax (Exemption) (No. 41) Order 2005 [*P.U. (A) 308/2005*];
- (x) exemption under the Income Tax (Exemption) (No. 42) Order 2005 [*P.U. (A) 309/2005*];
- (xi) exemption for venture capital company under the Income Tax (Exemption) (No. 11) Order 2005 [*P.U. (A) 75/2005*];
- (xii) Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [*P.U. (A) 76/2005*]; or
- (xiii) deduction under the Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007 [*P.U. (A) 373/2007*].

Made 3 July 2007

[Perb. CR(8.09)294/6/4-9 (Sj.9) (Sk. 9); LHDN. 01/35/(S)/42/51/82-64; PN(PU<sup>2</sup>)80/LI]

TAN SRI NOR MD BIN YAKCOP  
*Second Minister of Finance*

[*To be laid before the Dewan Rakyat pursuant to subsection 127(4) of the Income Tax Act 1967*]



**P.U. (A) 373.**

INCOME TAX ACT 1967

INCOME TAX (DEDUCTION FOR INVESTMENT IN A BIO-NEXUS STATUS COMPANY) RULES 2007

IN exercise of the powers conferred by paragraph 154(1)(b) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

**Citation and commencement**

1. (1) These rules may be cited as the **Income Tax (Deduction for Investment in a BioNexus Status Company) Rules 2007**.

(2) This Rules are deemed to have come into operation on 1 May 2005.

**Interpretation**

2. In these Rules, unless the context otherwise requires –

“qualifying person” means –

(a) a company incorporated under the Companies Act 1965 [Act 125];

or

(b) an individual who is a Malaysian citizen, resident and has business source;

“investment” means an investment in the form of cash or holding of issued shares capital in a BioNexus status company;

“Malaysian Biotechnology Corporation Sdn. Bhd.” means a company incorporated under the Companies Act 1965 whose function is for the purpose of developing the biotechnology industry in Malaysia;

“early stage” means the stage of initiating commercialization of a technology or product, increasing product capacity, product development and marketing;

“seed capital stage” means the stage of research, assessment and development of an initial concept or prototype;

“new business” means the first approved business undertaken by a BioNexus status company;

“life sciences” means any of several branches of science, such as biology, medicine, anthropology or ecology, which deal with living organisms and their organization, life processes, and relationships to each other and their environment;

“BioNexus status company” means a company incorporated under the Companies Act 1965 which is engaged in a business of life sciences.

**Deduction**

3. (1) Subject to these Rules, for the purpose of ascertaining the adjusted income of a qualifying person resident in Malaysia from its business, there shall be allowed a deduction in the basis period for a year of assessment an amount equivalent to the value of investment made by the qualifying person in a company which has been approved by the Minister as a BioNexus status company.

(2) The investment referred to in subrule (1) –

(a) shall be made for a period and up to the amount as approved by the Minister;

(b) shall be for the sole purpose of financing activities at seed capital stage or early stage of a new business; and

(c) shall not be disposed of within five years from the date of last investment made if such investment is in the form of holding of issued shares capital;

(3) Investment made by the qualifying person prior to the commencement of a new business shall be deemed to be incurred on a date the new business commences and that date shall be determined by the Malaysian Biotechnology Corporation Sdn. Bhd.

(4) Where a qualifying person who has made an investment in the form of issued shares capital and claimed a deduction in respect of that investment under subrule (1) receives an amount as consideration for the disposal of such shares, the amount so received by that qualifying person shall be added in ascertaining his adjusted income for the year of assessment in the basis period in which that amount was received:

Provided that –

(a) the amount so added shall not exceed the total deductions allowed in relation to that investment; and

(b) this subrule shall not apply where the disposal of such shares take place after five years from the date of last investment in the form of issued shares capital is made in the BioNexus status company.

**Conditions to qualify for the deduction**

4. For the qualifying person to qualify to get a deduction under rule 3, the qualifying person shall have made an application through the Malaysian Biotechnology Corporation for approval from the Minister on or after 1 May 2005.

**Cessation of deduction**

5. Where an investment is made by a qualifying person for the sole purpose of financing activities at seed capital stage or early stage of a new business is deducted under these Rules, the deduction shall cease to apply to the qualifying person in the basis period for a year of assessment upon a BioNexus status company carried out by the qualifying person has its first statutory income.

Made 2 September 2007

[Perb. CR (8.09) 294/6/4-9 (Sj.9) (Sk.9) (A); LHDN. 01/35/(S)/42/51/231-17.8;  
PN(PU<sup>2</sup>)80/LI]

TAN SRI NOR MD BIN YAKCOP  
*Second Minister of Finance*

*[To be laid before the Dewan Rakyat pursuant to subsection 154(2) Income Tax Act 1967]*

**P.U. (A) 374.**

INCOME TAX ACT 1967

INCOME TAX (INDUSTRIAL BUILDING ALLOWANCE)  
(BIO-NEXUS STATUS COMPANY) RULES 2007

IN exercise of the powers conferred by paragraph 154(1)(b) of the Income Tax Act 1967 [*Act 53*], the Minister makes the following rules:

**Citation and commencement**

1. (1) These rules may be cited as the **Income Tax (Industrial Building Allowance) (BioNexus Status Company) Rules 2007**.

(2) These Rules are deemed to have come into operation on 2 September 2006.

**Interpretation**

2. In these Rules, unless the context otherwise requires –

“incurred” has the same meaning assigned to it in paragraphs 46 and 55 of Schedule 3 to the Act;

“Malaysian Biotechnology Corporation Sdn. Bhd.” means a company incorporated under the Companies Act 1965 [*Act 125*] whose function is for the purpose of developing the biotechnology industry in Malaysia;

“qualifying building expenditure” means capital expenditure incurred on the construction or purchase of a building under paragraph 3 of Schedule 3 of the Act but does not include capital expenditure incurred on buildings used for storage or as living accommodation which are provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff;

“new business” means the first approved business undertaken by a BioNexus status company;

“expansion project” means a project undertaken by a BioNexus status company in expanding its existing approved business and that business –

(a) has been granted exemption under the Income Tax (Exemption) (No. 17) Order 2007 [*P.U. (A) 371/2007*] or the Income Tax (Exemption) (No. 18) Order 2007 [*P.U. (A) 372/2007*]; and

(b) involves new investment;

“life sciences” means any of several branches of science, such as biology, medicine, anthropology or ecology, which deal with living organisms and their organization, life processes and relationships to each other and their environment;

“BioNexus status company” means a company incorporated under the Companies Act 1965 which is engaged in a business of life sciences.

**Application**

3. (1) These Rules shall apply in respect of qualifying building expenditure incurred by a company resident in Malaysia which has been approved by the Minister as a BioNexus status company in the basis period for a year of assessment used for the sole purpose of its new business or expansion project, as the case may be.

(2) For the purpose of subrule (1), any qualifying building expenditure incurred by a BioNexus status company prior to the commencement of its new business or expansion project, as the case may be, shall be deemed to have been incurred on the date the business or project commences.

(3) The first qualifying building expenditure incurred shall be on a date determined by the Malaysian Biotechnology Corporation Sdn. Bhd. and the date shall not be earlier than 2 September 2006.

**Allowance**

4. (1) An amount of allowance under paragraph 80 of Schedule 3 of the Act shall be allowed to a BioNexus status company equals to one tenth of the qualifying building expenditure for a year of assessment and for each of the following nine years of assessment.

(2) Where a building qualifies for the allowance under subrule (1) and such building is disposed of within two years from the date of completion or acquisition of the building, the allowance which have been made by the company shall be withdrawn in the basis period for the year of assessment that building is disposed.

Made 2 September 2007

[Perb. CR(8.09)294/6/4-9 (Sj.9) (Sk.9) (A); LHDN. 01/35/(S)/42/51/231-17.8; PN(PU<sup>2</sup>)80/LI]

TAN SRI NOR MD BIN YAKCOP  
*Second Minister of Finance*

[To be laid before the Dewan Rakyat pursuant to subsection 154(2) Income Tax Act 1967]